

STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE MATTER OF THE)
SOUTH RICHLAND)
CONSERVANCY DISTRICT)

IN THE FULTON CIRCUIT COURT³
CAUSE NO. 25C01-1101-MI-1

) Administrative Cause
) Number: 11-042C

**RECOMMENDATIONS OF THE NATURAL RESOURCES COMMISSION
WITH RESPECT TO THE PETITION FOR THE ESTABLISHMENT OF THE
SOUTH RICHLAND CONSERVANCY DISTRICT**

I. PETITION, SUMMARY OF EVIDENCE RECEIVED AT PUBLIC HEARING

A. Petition

On March 3, 2011, the Natural Resources Commission (the “Commission”) received a copy of the Petition for the Establishment of the South Richland Conservancy District (the “Petition”). A conservancy district may be established for any purpose set forth in Ind. Code §14-33-1-1(a). The Petition lists the purpose for which the conservancy district is proposed as providing water supply, including treatment and distribution, for domestic, industrial, and public use. The proposed district would not provide fire protection or water for outdoor use. Petition, ¶ 2.

On February 16, 2011, A. Christopher Lee, Judge of the Fulton Circuit Court, entered an order referring the Petition to the Natural Resources Commission, in substantive part, as follows:

...

The Court further finds that this matter should be referred to the Natural Resources Commission for hearing, determination, and report in accordance with IC 14-33-1.

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED by this Court as follows:

1. The notice of filing, pendency, docketing, and hearing on the Petition by publication and the proofs thereof be, and the same hereby are, in all things approved by the Court.
2. The Petition to Establish the South Richland Conservancy District bears the necessary number of signatures of freeholders owning land within the proposed conservancy district, and complies with the statutory requirements as to form and content as set forth in IC 14-33-1 and particularly in IC 14-33-2-4, and that said Petition be, and the same hereby is, in such respects approved by this Court.
3. The Clerk of this Court shall forthwith forward to the Natural Resources Commission a certified copy of the Petition, and a certified copy of this Entry...

4. The Natural Resources Commission shall make a determination in respect to said Petition in accordance with IC 14-33-2-17, inclusive.
5. The Natural Resources Commission shall file a report in this Court in accordance with IC 14-33-2-22 as soon as practicable but in any case within one hundred twenty (120) days of the date of this Entry.

...

As a consequence of the Court's referral, the Commission on March 15, 2011 circulated letters to state and local governments for comment.

Under the Fulton Circuit Court Order and Ind. Code § 14-33-2-19, a public hearing was held as scheduled on April 20, 2011, in the Fulton County Library, 320 West Drive, Rochester, Indiana. Notice of the public hearing was published on March 21, 2011 in *The Rochester Sentinel*, a newspaper of general circulation in Fulton County. A notice of the public hearing was also posted to the Commission's online calendar accessible at <http://www.in.gov/nrc/2307.htm>.

B. Summary of Evidence Received at Public Hearing

Jennifer M. Kane was appointed as the Commission's hearing officer. Kane opened the public hearing as scheduled on April 20, 2011 to receive comments on the proposed South Richland Conservancy District. She outlined the statutory responsibilities of the Commission pertaining to the review of a proposed conservancy district. Attending the public hearing were Alan M. Hux, attorney for the Petitioners; Terri Price from the Department of Natural Resources, Division of Water; and Kevin Houppert from the Indiana Department of Environmental Management. Approximately 20 other persons attended.

The Hearing Officer called upon Alan Hux to present evidence in support of the petition.

Petitioner and Supporting Evidence

Alan Hux introduced the following exhibits¹:

¹ In the review of the Department of Natural Resources Division of Water's memorandum dated April 29, 2011, it was discovered that the Petitioners' attorney filed additional exhibits with the Division of Water. Petitioners' Exhibit B [**Hearings' Exhibit 4**] is a hand-drawn map of approximately six parcels, five of which are shaded in gray, located on the west and east sides of a bow of the Tippecanoe River. Petitioners' Exhibit C [**Hearings' Exhibit 5**] is an unsigned form entitled "Request to Withdraw Property from the Boundaries of South Richland Conservancy District". To note, however, Hearings' Exhibits 4 and 5 were not presented by the Petitioners' attorney during the Commission's public hearing.

Petitioners' Exhibit A [Hearings' Exhibit 1]: Petition for the Establishment of the South Richland Conservancy District;

Petitioners' Exhibit B [Hearings' Exhibit 2]: Letter dated April 19, 2011 from Jamieson Schiff, Textron, to the Natural Resources Commission; and

Petitioners' Exhibit C [Hearings' Exhibit 3]: Testimony of Gregory M. Myroth, P.E., MACTEC, South Richland Conservancy District, April 20, 2011 (Attachment: Exhibit MAC-1, Preliminary Engineering Report)

Hux introduced Jamieson Schiff and Gregory M. Myroth to testify in favor of the proposed Petition. Their testimony is summarized² as follows:

Jamieson Schiff, Director of Site Remediation and Senior Associate General Counsel, with Textron, Inc. ("Textron"), a business located in Providence, Rhode Island, stated that Textron is a freeholder within the proposed district boundaries. Schiff said Textron spearheaded the proposed formation for the South Richland Conservancy District, and has dedicated approximately two years in formulating a solution to provide water to the residences located within the proposed district. Schiff said Textron signed the Petition, and he noted the map attached to the Petition, as filed with the Fulton Circuit Court, depicts the boundaries of the proposed district.

Schiff indicated he believed the proposed conservancy district covers and serves a proper area. He stated, "Ground water in the area has been impacted by former operation of Textron at its fastener facility, which it sold in 2006". He stated the U.S. Environmental Protection Agency, (the "USEPA"), "would like that public water be brought to the area—the City of Rochester waterline be extended to that area to provide them water. The City did not want to operate that extension themselves, because it is outside of the city limits. So, the conservancy district was viewed as the means to be able to construct and operate that waterline extension." Schiff said Textron would construct the waterline extension under a consent order with the USEPA.

Schiff said the proposed conservancy district is necessary in order to provide water to those within the district boundaries. Textron has agreed to provide the funding necessary for the formation of the conservancy district and to provide the funding for the installation of the water distribution system with connection to the City of Rochester's water system. Schiff explained that Hearings' Exhibit 2 is Textron's letter of intention concerning funding of the proposed district and the water distribution system.

Schiff said the proposed conservancy district holds promise of economic and engineering feasibility. Textron contracted with MACTEC, a full service engineering firm, to provide a preliminary engineering report for the construction of the waterline extension. He said the public would be served immediately as municipal quality water is provided to the freeholders within the proposed district. He said the proposed conservancy district, for the purpose of providing water

² Statements made at the April 20, 2011 public hearing that are identified with quotation marks are intended to set off direct quotations. The audio quality of the recording was not always pristine. As a result, the statements should be considered as summaries and not as verbatim.

supply, including treatment and distribution, for domestic, industrial, and public use, would be compatible with other water management projects within the area.

Gregory M. Myroth, P.E. stated that he is a civil engineer and employed with MACTEC, a full service engineering firm. MACTEC's Peoria, Illinois office specializes in water and waste water engineering. Myroth stated that he prepared in advance written testimony (Hearings' Exhibit 3) for filing with the Natural Resources Commission. He prepared the Preliminary Engineering Report (Exhibit MAC-1) for the proposed conservancy district, which is attached to Hearings' Exhibit 3. Myroth testified if he were asked the same questions as contained in Hearings' Exhibit 3 today, his answers would be the same as those contained in the written testimony.

Other Comments Received

Marianne Christenson, a freeholder within the proposed conservancy district, stated that she was in favor of the conservancy district. "I feel that that's the only way we are going to have city water provided." She said that she was somewhat concerned regarding the appointment of a board of directors and the submission of a budget. "As far as I know no one in our district is really capable of performing that kind of a task."

Donald Christenson, a freeholder within the proposed conservancy district, stated he was in favor of the conservancy district for the reason that "I am ignorant in a lot of things that are going on, and I don't see how we are ever going to get good water back in this area without the water being provided by the city. They talk about a remediation process, which there is no indication they have even started it. It can take many years before the ground water itself is good." He said property values in the area have declined dramatically. "We are all sitting here with a bunch of property that is basically worthless. Nobody wants it, and we can't sell it." Christenson said the proposed conservancy district would address the water issues within the area.

Terry Lee, a freeholder within the proposed conservancy district, stated that he was in favor of the conservancy district. Lee said he would like more information regarding the preliminary engineering report and the construction plans for the waterline extension. He asked whether there was a standing agreement with the City of Rochester to provide water to the proposed conservancy district. "I understand that maybe there is not." He asked whether there were any restrictions on future growth or the ability to add connections to the waterline extension. "I understand that maybe there are restrictions that would not be advantageous to the area."

Doug Garvison, a freeholder within the proposed district, stated that he was in agreement with the comments presented by Terry Lee.

Roger Rose, Vice President of the Fulton County Board of Commissioners, stated that the Fulton County Commissioners have been involved in an oversight capacity regarding the planning of providing water for the area within the proposed conservancy district. "We are concerned about the situation and wanting the best solution for the problem. At this point in time, my concern with regard to the establishment of the district isn't so much with the district itself. I think the district is very necessary and appropriate. I am concerned about some of the technical aspects of

the solution that has been proposed. The extension of the waterline from the City of Rochester with regard to the adequacy of that there has been a lot of questions raised. I haven't really heard what the latest plan for that is. It seems to me that in the discussion that I have heard, which has extended over quite a period of time since this project has come up, it isn't clear to me that the system that's proposed has taken into account the future needs of the industrial establishments there. . .what those future needs might be with regard to this system. I don't know that I'm totally satisfied that there has been due diligence done. . .and do have some questions that remain in my mind in terms of the technical merits of the system over the long term."

Petitioners' Response to Comments Received at Public Hearing

The Petitioners' Attorney, Alan Hux, responded to comments received by noting that if the proposed district is established, the district plan would be filed with the Department of Natural Resources, and subsequently filed with the Fulton Circuit Court. He said the district plan would contain full engineering plans for the provision of water to those within the proposed district.

II. COMMENTS RECEIVED AFTER PUBLIC HEARING

Joe B. Hunting, by email, filed the following:

My Wife I, and our 4 children that all under the age of 17 live at 1387 E. 350 N., Rochester, IN 46975. Our property has been included in the boundary for the formation of the Conservancy District, and I was one of the signers of the petition to establish the Conservancy District.

We want a treated water supply at our residence. We are concerned with the not only our family's health, but also concerned about our properties value with the contamination being in our area. Although random water testing completed at our property has not yet discovered contamination, our property value has already been effected by this contamination.

At the time Judge Lee was reviewing the conservancy, I received a phone call and had conversation with Jamison Shift the attorney for Textron. Mr. Shift indicated that there could be a boundary shift for the conservancy, and exclude our neighbors homes and OUR home. I take exception to the change in boundaries after the conservancy is in process, especially since my signature was one of the counted signatures to qualify the initial legal processing for the Conservancy.

My wife and I cannot control the wishes of our neighbors, they may or may not want treated water. We do want treated water.

III. GOVERNMENTAL COMMENTS: STATE, FEDERAL, AND COUNTY

Indiana Utility Regulatory Commission

On March 30, 2011, DeAnna L. Poon, Assistant General Counsel for the Indiana Utility Regulatory Commission, filed the following:

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3407



<http://www.in.gov/nurc>
Office: (317) 232-2701
Facsimile: (317) 232-6758

March 29, 2011

Ms. Jennifer M. Kane
Natural Resources Commission, Division of Hearings
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204

Re: Petition for the Creation of the Southland Conservancy District

Dear Ms. Kane:

The Indiana Utility Regulatory Commission (the "Commission") has reviewed your letter and the petitions regarding the creation of the Southland Conservancy District. This proposed conservancy district will, among other things, provide public water supply. Indiana Code section 14-33-20-14 provides that conservancy districts electing to provide public water supply "shall file the initial schedule of rates and charges to patrons of the district with the Commission." Subject to compliance with this statutory requirement, the Commission has no objection to Southland's petition for the creation of a conservancy district.

Also please note that any new community public water supply system must fulfill the technical, managerial, and financial capacity requirements of 327 IAC 8-3.6 prior to making a submission to the Indiana Department of Environmental Management for a permit to construct.

Should you have questions, comments, or require additional information, please do not hesitate to contact me at (317) 232-6735.

Sincerely,

A handwritten signature in cursive script that reads "DeAnna L. Poon".

DeAnna L. Poon
Assistant General Counsel

cc: Curt Gassert, Director of the Water/Sewer Division
Doug Webber, General Counsel

Indiana State Department of Health

On March 17, 2011, Michael Mettler, Director of Environmental Public Health, Indiana State Department of Health, filed the following:

We have no reservation about the proposed project and foresee no significant environmental disturbance.

Indiana Department of Natural Resources

On April 29, 2011, Michael W. Neyer, Director of the Department of Natural Resources, Division of Water, filed the following:

**Division of Water
Memorandum**

Date: April 29, 2011

To: Jennifer Kane
Hearing Officer, NRC, Division of Hearings

From: Michael W. Neyer, PE, Director
DNR, Division of Water

Subject: South Richland Conservancy District, Fulton County
Establishment

On February 16, 2011, the Fulton Circuit Court, Cause Number 25C01-1101-MI-1, ordered that the petition filed for the formation of the South Richland Conservancy District met the statutory requirements set forth by the Indiana Legislature. In accordance with IC 14-33-2-17, the petition was filed with the Natural Resources Commission (NRC). The petition was forwarded to the Division of Water for review and comment.

The proposed South Richland Conservancy District is located in portions of Sections 19, 28, and 29 Michigan Road Lands, Richland Township, Fulton County. Records from the Auditor of Fulton County indicate there are forty-seven (47) freeholders in the proposed district. The petition filed with the circuit court contained the signatures of fifteen (15) freeholders which according to IC 14-33-2-2 is considered sufficient. The proposed district shall be established for the purpose of providing water supply, including treatment and distribution, for domestic, industrial, and public use.

The area of the proposed conservancy district is currently on private water wells. As a manufacturer of metal fasteners, Textron operated a plant on Old State Road 31 on the north side of Rochester for many years. This manufacturing plant was sold in 2006 and subsurface investigations identified contamination in the groundwater. A chlorinated solvent migrated from the facility towards the south and southeast area properties. Eight (8) residential water wells were identified as containing detections of these solvents. As a result Textron is working with the United States Environmental Protection Agency (USEPA) to supply public water to the area through an extension of an existing water main from the City of Rochester. Textron is in the process of finalizing a consent order with the USEPA to achieve this goal. The City of Rochester is willing to sell water to the proposed conservancy district from its system. Because the affected area is outside the city limits, Rochester declined to take over management of the water line extension. In order to provide a legal mechanism to provide a potable source of water, a petition was filed for the creation of a conservancy district. As noted in the petition this water supply will not include fire protection, or water for outdoor use.

The majority of the properties to be included in the conservancy district are residential and in a semi-rural

setting. A few of the properties to be served by the proposed water line extension have ongoing agricultural operations including crop production and livestock. Existing well connections to the homes will be disconnected but the wells may continue to be used for outdoor purposes such as landscaping, irrigation and livestock watering. Textron has provided whole house granular activated carbon filtration systems to all of the homes in the affected area. There has been discussion that these treatment systems will continue to be maintained by Textron so that the water can be utilized for irrigation and livestock. Additionally, staff from the Indiana Department of Environmental Management indicated that deed restrictions will be in place so that the water wells cannot be used for consumption in the future.

Petitioners elected to accomplish the purpose of providing water supply pursuant to IC 14-33-20 provided that no special benefit tax will be levied and all costs will be paid for by sources other than the levy of a special benefits tax.

A letter from Textron dated April 19, 2011 indicates that if the USEPA's consent order requires a water distribution system in order to furnish public water, they will provide funding for the construction of the system to serve the freeholders of the District. Once a distribution system is in place to serve the freeholders, it will be donated to the District. Textron will also pay the District's cost of operation and maintenance of the distribution system until the time that USEPA and IDEM agree that the ground water is no longer a threat to public health. According to the petition, Textron will also be responsible for all costs of the establishment of the conservancy district.

As directed by Chapter 2, Section 17 of the Indiana Conservancy Act (IC 14-33), and pursuant to the public hearing on April 20, 2011, concerning the proposed establishment of the South Richland Conservancy District in Fulton County, the Division of Water offers the following comments.

(1) Appears to be necessary

Textron, who still owns property and is a freeholder within the area of the proposed South Richland Conservancy District, operated a manufacturing facility for several years. Upon the sale of the facility, subsurface investigations found contamination leaving the facility and detections of chlorinated solvents were found in the groundwater. Freeholders in this area are restricted in their ability to use their existing water wells for consumptive purposes.

Textron retained the engineering firm of MACTEC who has provided engineering, environmental, and construction services to public and private clients. MACTEC assisted Textron in determining the possible options to provide potable water to the freeholders within the proposed conservancy district. Several options were considered but purchasing water from the City of Rochester through a master meter and then distributing the water through a system to be constructed in the proposed district was the most feasible long term solution to pursue.

Because USEPA's consent order may require Textron to provide potable water, it is the opinion MACTEC's professional engineer, Textron's Director of Site Remediation, and several freeholders that the proposed district is necessary.

(2) Holds promise of economic and engineering feasibility

Textron hired MACTEC, a firm with extensive experience in municipal water and wastewater engineering to assist with the requirements of the USEPA to provide potable water to an area outside the city limits of Rochester. Though other options were considered, the most feasible long term solution would be the purchase of water from the City of Rochester. Indiana Administrative Code, 327 IAC 8-3.3-2 was used to determine the public water system quantity requirement standards for

average and peak demand conditions. The water main is sized for 39 connections at a usage of 500 gallons per day per connection with capacity for limited future expansion in the affected area.

Due to the distance from the City of Rochester's water treatment plant, current operating pressure will not be sufficient to serve all of the new connections. Therefore, a duplex booster pump station will be installed downstream of the connection to the city system to be certain adequate pressure is provided for the new connections. To ensure adequate chlorine residual is maintained provisions for chlorine adjustment will be provided. A pre-fabricated equipment enclosure will be used to house the booster pump and chlorine addition equipment. A backup generator will also be installed in the equipment enclosure in the event that primary power is lost. The new system will include both manual and automatic water flushing valves to maintain water quality. It is estimated that capital cost of the water main installation is \$1,735,722.

With regard to water main operation, a contract operator with qualified and appropriately licensed staff will be retained to operate and maintain the system. It is estimated annual operation and maintenance of the water main will be \$88,000.

(3) Seems to offer benefits in excess of costs

According to the Indiana Conservancy Act (IC 14-33-2-17c3), the commission shall make a determination and report to the court whether the proposed district meets the following conditions:

The proposed district seems to offer benefits in excess of costs and damages for the purposes other than the following:

- (A) water supply;
- (B) storage of water for augmentation of stream flow;
- (C) sewage disposal.

Because the South Richland Conservancy District proposes to establish for water supply benefits in excess of costs do not need to be presented.

(4) Whether the public health will be served immediately or prospectively by the establishment of the district

According to the Indiana Conservancy Act (IC 14-33-2-17c4), the Commission shall make a determination and report to the court whether the proposed district meets the following conditions:

(4) Whether the public health will be served immediately or prospectively by the establishment of the district for any of the following purposes:

- (A) water supply;
- (B) sewage disposal;
- (C) storage of water for augmentation of stream flow;
- (D) any combination of these purposes.

The quality of the water produced from the existing water wells within the proposed district is at issue because investigations have identified solvent contamination in groundwater leaving the former Textron facility. The establishment of the district is to provide water to the freeholders of the proposed district for consumptive uses. By extending the City of Rochester water main and installing a distribution system to the affected residents, the public health will be served immediately.

(5) Proposes to cover and serve a proper area

Chapter 3 of the Indiana Conservancy Act states "any area may be established as a district if each part of the district is contiguous to another part". The proposed boundaries of the South Richland Conservancy District are contiguous. As currently proposed, the boundaries of the South Richland Conservancy District appear to cover and serve a proper area.

Petitioner's Exhibits "B" and "C" [**Hearings' Exhibits 4 and 5**] were provided at the April 20, 2011 public hearing. These documents indicate that five (5) freeholders south of the Tippecanoe River may request to withdraw their property from the boundaries of the South Richland Conservancy District. However no testimony was provided at the public hearing about this possibility. As noted in Petitioner's Exhibit "B" [**Hearings' Exhibit 4**], the boundaries can be redrawn to include the one (1) remaining freeholder should the others request withdrawal from the proposed district. Should any of the five (5) freeholders south of the Tippecanoe River withdraw from the South Richland Conservancy District boundaries, it is unlikely they will be provided public water in the future through the District. Any changes in the District's boundaries must be addressed by the Fulton Circuit Court.

(6) Could be established and operated in a manner compatible with established Conservancy Districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects

Fulton County currently has three (3) existing conservancy districts which are: Mill Creek, Lake Bruce, and Nyona-South Mud. None of these conservancy districts are in the proximity of the proposed South Richland Conservancy District.

The proposed district is located outside the City limits of Rochester and currently on private water wells. Testimony at the April 20th public hearing indicated that the proposed South Richland Conservancy District could be established and operated in a manner compatible with other districts/projects.

United States Department of Agriculture/Natural Resources Conservation Service

On March 23, 2011, Daniel M. Rosswurm, District Conservationist of USDA/NRCS, Rochester, Indiana, by email, filed the following:

I support the establishment of the South Richland Conservancy District for the purpose of providing clean, safe water supply and treatment to the residents within the district.

Fulton County Health Department

In a letter dated April 12, 2011, Craig A. Bugno, MD, Health Officer with the Fulton County Health Department, filed the following:

Fulton County Health Department

125 E 9th St.
Craig Bugno, MD

Rochester, IN 46975
Health Officer
fulton@isdh.in.gov

(574) 223-2881
Fax (574) 223-2335

Re: Petition for Creation of the South Richland Conservancy District;
Fulton Circuit Court Cause Number 25C01-1101-MI-1;
(NRC Administrative Cause Number 11-042C)

April 12, 2011

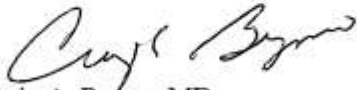
Indiana Natural Resources Commission (NRC)
Division of Hearings
100 N. Senate Ave., Rm. N501
Indianapolis, IN 46204-2200

Dear Indiana Natural Resources Commission (NRC):

The Fulton County Health Department provides the following comments in correlation to the creation of the South Richland Conservancy District:

1. Treated water needs to be provided to residents within this area for domestic purposes.
2. The best option to provide treated water would be to extend the City of Rochester's public water supply to this area.
3. If the City of Rochester's public water supply cannot be extended to this area the next option would be to establish a Conservancy District.

Sincerely,



Craig A. Bugno, MD
Health Officer

III. RECOMMENDATIONS

As the statutory responsibilities of the Commission are applied to the proposed South Richland Conservancy District, the Commission shall make a determination under Ind. Code § 14-33-2-17 and report to the Fulton Circuit Court whether the proposed district, for the purposes of providing water supply, including treatment and distribution, for domestic, industrial, and public use, meets the following conditions:

- (1) The proposed district appears to be necessary.
- (2) The proposed district holds promise of economic and engineering feasibility.
- (3) Whether the public health will be served immediately or prospectively by the establishment of the district.
- (4) The proposed district proposes to cover and serve a proper area.
- (5) The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

Within this statutory structure, the following findings are recommended to the Fulton Circuit Court with respect to the proposed South Richland Conservancy District:

The proposed district appears to be necessary

There are 47 freeholders within the proposed conservancy district boundary. The area within the proposed conservancy district is semi-rural and located north of the City of Rochester, Indiana. The properties are on well water and septic systems. The majority of the properties are residential use. A couple of the properties have ongoing agricultural operations including crop production and raising livestock.

Textron is a Delaware corporation that is duly qualified to do business in the State of Indiana and is a freeholder in the proposed South Richland Conservancy District. Hearings' Exhibit 2

According to the Preliminary Engineering Report,

Textron operated a metal fastener manufacturing plant ("Torx facility") located at 4366 North Old US Highway 31 in Richland Township for many years until Textron sold the facility in 2006. Subsurface investigations have identified chlorinated solvent contamination in groundwater leaving the facility and migrating south and southeast onto area properties. Eight residential drinking wells (there is no public water in the area) have been identified as containing detections of chlorinated solvents.

As a result of the foregoing, the United States Environmental Protection Agency (USEPA) has requested Textron to supply public water to the area through extension of the existing City of Rochester water main. Textron is in the process of finalizing with USEPA a consent order to achieve this goal.

The City of Rochester is willing to sell to the community water from its system. However, it declined to take over the management of the water line extension because the area to be served is located outside of City limits. Thus, this conservancy district petition has been filed in order to provide a legal mechanism for providing the area potable water.

Hearings' Exhibit 3, Preliminary Engineering Report, Exhibit MAC-1, p. 1.

The new water supply will be for potable water use. Existing well connections to the homes will be disconnected. Continued use of ground water wells for outdoor use such as landscaping, irrigation, and livestock watering will be available. *Id.* Textron has provided whole house granular activated carbon filtration systems to all of the homes in the affected area. There has been discussion that these treatment systems will continue to be maintained by Textron so that the water can be utilized for irrigation and livestock. Additionally, the Indiana Department of Environmental Management (the "IDEM") indicated that deed restrictions will be in place so that the water wells cannot be used for consumption in the future. DNR Division of Water Memorandum, page eight of this report.

The City of Rochester is not willing to manage the water line extension to the proposed conservancy district. Hearings' Exhibit 3, Exhibit MAC-1, p. 1. The area within the proposed district is not incorporated and there is no known governance board unifying the freeholders within the proposed district. The Fulton County Health Department supports the creation of the proposed conservancy district. Fulton County Health Department, page eleven of this report.

With the establishment of the proposed district, and subsequent appointment of a board of directors, the South Richland Conservancy District would have the ability to contract with a qualified entity that would manage and maintain the water line extension and its appurtenances. The proposed district appears to be necessary.

The proposed district holds promise of economic and engineering feasibility

Several options were considered by MACTEC for supplying potable water to the area within the proposed conservancy district. These options included:

- Extension of the City of Rochester water main system to the affected residents with the new water main operated and maintained by the city.
- Connection to the city of Rochester water main system with a master meter and water purchase agreement with the City. The new water main would be installed to provide water to affected residents with the water main downstream of the master meter owned, operated and maintained by a conservancy district.
- Installation of a ground water supply well, water treatment equipment and new water main to serve affected residents. The water well and treatment equipment would be located on Textron property in an area suitable for ground water withdrawal. The entire water supply system including well, treatment equipment, and transmission main would be owned, operated and maintained by a conservancy district.

After review of these options, it was determined that the master meter with water purchase from the City of Rochester scenario was the most feasible long-term solution to provide potable water to the affected residents.

Hearings' Exhibit 3, Preliminary Engineering Report, Exhibit MAC-1, p. 2.

According to *In re Petition for Establishment of the Millpond Conservancy District*,

A conservancy district is a special taxing district created for local public improvement. *Martin v. Ben Davis Conservancy Dist.*, 238 Ind. 502, 523, 153 N.E.2d 125, 135 (1958). “The Indiana Conservancy Act allows for ‘the creation of conservancy districts for the purpose of controlling stream pollution, drainage, irrigation, water supply and other natural resources. It creates a board of directors and permits the levying of a tax and assessment for the benefits and improvements to the real estate within the district.’” *Clear Creek Conservancy Dist. v. Kirkbride*, 743 N.E.2d 1116, 1117 (Ind.2001) (quoting *Martin*, 238 Ind. at 507, 153 N.E.2d at 128).

In re Petition for Establishment of the Millpond Conservancy District, 891 N.E.2d, 54, 55 (Ind.App. 2008)

According to the Petition (Hearings’ Exhibit 1),

¶5. This petition is not conditioned upon either a grant of federal or state funds. Petitioners know of no grants, either federal or state, presently available; Textron, Inc. a freeholder in the proposed district shall be responsible for all costs of establishment.

¶6. The petitioners elect to accomplish the purpose of providing water supply, including treatment and distribution for domestic, industrial and public use pursuant to I.C 14-33-20; provide that no special benefit tax will be levied and all costs will be paid for by sources other than the levy of a special benefit tax.

¶7. Maintenance and operation of the works of improvements necessary for providing water supply, including treatment and distribution for domestic, industrial and public use shall be paid for by sources other than the levy of a special benefits tax as the Court may order in its approval of the district plan.

Textron has agreed to provide the funding necessary for the formation of the conservancy district and for the installation of the water distribution system with connection to the City of Rochester’s water system. Testimony of Schiff, page three of this report. The proposed water main extension will be approximately 14,400 feet of four inch diameter pipe with approximately 4,000 feet of three inch lateral lines. The water main will be sized for 39 customers at a usage of 500 gallons per day with capacity for limited future expansion within the boundaries of the district. Hearings’ Exhibit 3, Written Testimony of Gregory Myroth, p. 3, 4. The new system will include both manual and automatic water flushing valves to maintain water quality, and provisions for chlorine adjustment will also be provided to ensure an adequate chlorine residual is maintained. Hearings Exhibit 3, MAC-1, p. 2.

The estimated capital cost of the water main installation is \$1,735,722, and the estimated annual operation and maintenance cost of the water main in 2010 dollars is \$88,000. *Id.*, p. 3, 4. A contract operator with qualified and appropriately licensed staff will be retained to operate and maintain the water main system. *Id.*, p. 4. Textron will also pay the proposed conservancy district’s cost of operation and maintenance of any constructed water extension line associated with the proposed conservancy district by entering into an agreement with the district’s board of directors. Hearings’ Exhibit 2. Textron will cover costs of the water distribution system until

USEPA and IDEM agree that the groundwater is no longer is a threat to the public.³ DNR Memorandum, page eight of this report.

The installation of the waterline extension and purchase of water from the City of Rochester is the most feasible long-term solution to provide potable water to the freeholders within the proposed district. Hearings' Exhibit 3, Exhibit MAC-1, p. 2. The water extension line and its appurtenances would be donated to the proposed conservancy district. Hearings' Exhibit 2. The proposed conservancy district holds promise of engineering and economic feasibility. Hearings' Exhibit 3, Written Testimony of Myroth, p. 5.

The public health will be served immediately or prospectively by the establishment of the district

Subsurface investigations have identified chlorinated solvent contamination in groundwater within the area of the proposed conservancy district. Hearings' Exhibit 3, Exhibit MAC-1, p. 1. The Petition states the following: the freeholders within the proposed district are restricted in their ability to use their existing water wells for consumptive purposes; and the territory within the proposed district boundaries is unincorporated and a public water supply is not available to the freeholders within the proposed district boundaries. Hearings Exhibit 1, ¶ 3. The creation of the district will be conducive to the public health, safety and welfare of the freeholders and present and future residents. *Id.*, ¶ 4. By extending the City of Rochester water main and installing a distribution system to the affected residents, the public health will be served immediately. DNR, Division of Water Memorandum, page ten of this report.

The proposed district proposes to cover and serve a proper area

Any area may be established as a district if each part of the district is contiguous to another part.⁴ The area within the proposed district boundaries, as filed with the Fulton Circuit Court on January 4, 2011, is contiguous. See attached Exhibit A-1.

Prior to the public hearing, the Petitioners' attorney indicated to the Hearing Officer there were freeholders within the proposed district boundaries that wish to be removed from the proposed conservancy district. No testimony regarding the removal of freeholders was provided during the Commission's public hearing. The Petitioners' attorney provided to the Department's Division of Water a map (Hearings' Exhibit 4) depicting the freeholders that wish to be removed from the proposed district (shaded parcels). Hearings' Exhibit 4 (see attached), also depicts one parcel (not shaded), which appears to include the handwritten name "Hunting". Joe Hunting filed correspondence by email regarding the petition for the proposed conservancy district. Hunting indicated he signed the Petition, and it was his continued wish to remain in the proposed conservancy district. Hunting Comments, page five of this report.

³ On March 15, 2011, the Natural Resources Commission, Division of Hearings sent a letter to IDEM requesting comment regarding the Petition; however, no comments were received.

⁴ Ind. Code § 14-33-3-1.

The Petitioners' attorney also provided to the Division of Water an unsigned form entitled "Request to Withdraw Property from the Boundaries of the South Richland Conservancy District" (Hearings' Exhibit 5). Hearings' Exhibit 5 does not list landowners or parcel descriptions to be removed from the proposed district boundary. Any withdrawals from the petition must be filed with the Fulton Circuit Court.⁵

The Commission lacks sufficient evidence to make findings regarding the removal of freeholders. If the shaded parcels depicted in Hearings' Exhibit 4 were removed from the proposed district boundaries as filed with the Fulton Circuit Court (Exhibit A-1), the Hunting property would seemingly become isolated and fail the contiguity requirements of Ind. Code § 14-33-2-24. As depicted in Exhibit A-1, the proposed district would cover and serve a proper area.

The proposed district could be established and operated in a manner compatible with established: conservancy districts; flood control projects; reservoirs; lakes; drains; levees; and other water management or water supply projects

Evidence presented by the Petitioners as well as state agency comments filed during this proceeding establish there does not exist, near the proposed district boundaries, a water management or a water supply project with which the South Richland Conservancy District would interfere.

Dated: May 5, 2011

Jennifer M. Kane
Hearing Officer

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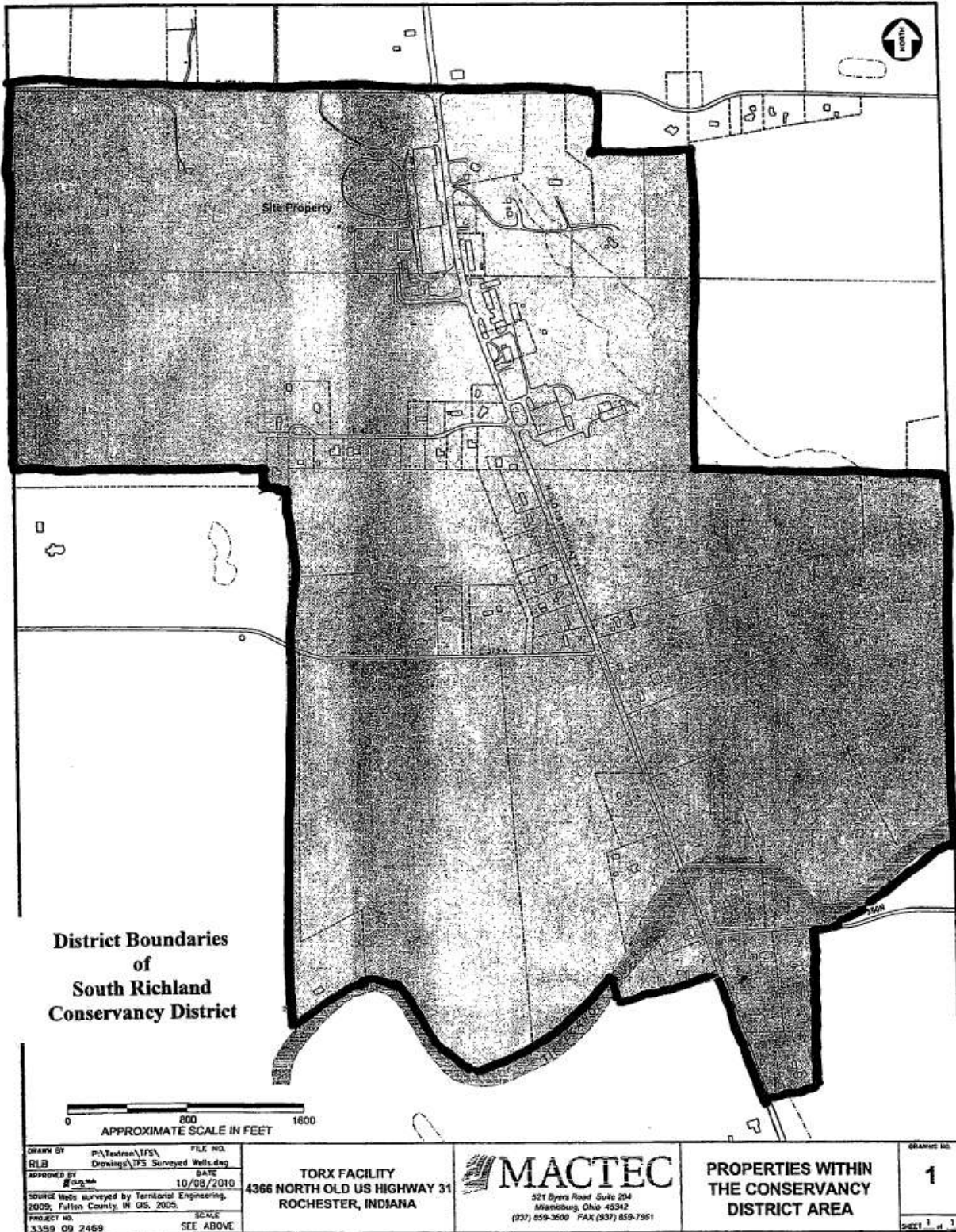


EXHIBIT A-1



HEARINGS' EXHIBIT 4